

UTAH OPEN & PUBLIC MEETINGS ACT

UTAH CODE ANN. §§52-4-101

et seq.



§52-4-102 Declaration of Public Policy

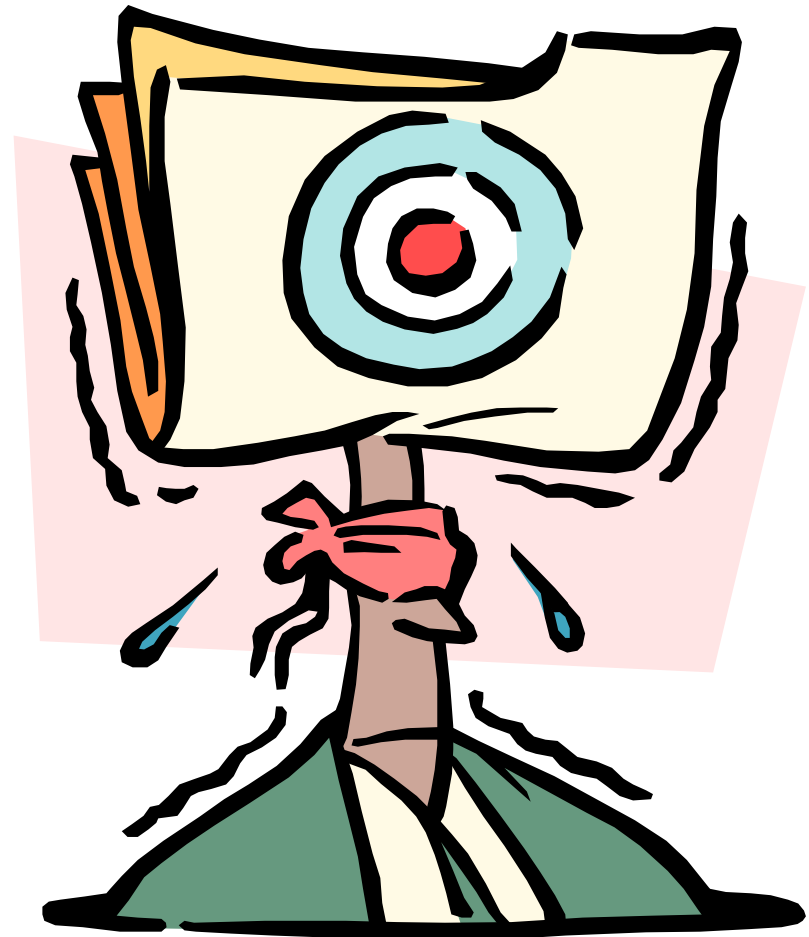
- (1) The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples business.
- (2) It is the intent of the Legislature that the state, its agencies and its political subdivisions : (a) take their actions openly; and (b) conduct their deliberations openly.

UTAH OPEN & PUBLIC MEETINGS ACT

- WHAT DOES THE OPEN MEETINGS ACT DO?
 - “It requires government to take actions openly.”
 - “Ensures deliberations allow for an open public process.”

Who Is Subject To This Law?

- DO I HAVE TO FOLLOW THE LAW?
- YES, if you are:
 - A state administrative, advisory or legislative body and;
 - Were created by the Utah Constitution, statute, rule ordinance or resolution
 - Consist of two or more persons
 - You spend, distribute or are supported by tax money
 - You have authority to make decisions about the public's business.



Examples

- DABC Commission
- State Records Committee
- Board of Pardons
- City Council
- City Council Advisory Boards
 - Planning & zoning
 - Board of adjustments
 - Project committees

Who Is Not Affected?

- Political parties, groups and caucuses
- Legislative conference, rules and sifting committees
- Community councils



§52-4-103(4)(a)

- WHAT IS A MEETING?
 - “Meeting” means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power, about, or acting upon a matter over which the public has jurisdiction or advisory power.”

§52-4-103(4)(b)

- WHAT DOES “MEETING” NOT MEAN?
 - A chance meeting
 - A social meeting
 - Meeting of a legislative body with both legislative and executive responsibilities
 - No public funds are appropriated
 - Meeting solely for discussion or to implement administrative/operational matters

Attendance at Meetings

- DO I HAVE TO ATTEND MEETINGS, OR CAN IT BE HELD WITHOUT PEOPLE IN THE SAME ROOM?
 - Can meet by phone, computer or other electronic means
 - Notice requirements still apply
 - Public must have a means to attend or participate
 - Must be adopted into existing rules/ordinance



§52-4-201(1)

Closed Meetings

- CAN A MEETING BE CLOSED TO THE PUBLIC? IF SO WHEN?
 - Discussing an individual's character, professional competence, or physical or mental health
 - Strategy sessions to discuss collective bargaining
 - Discussions regarding security personnel, devices or systems
 - Investigative proceedings regarding allegations of criminal misconduct
 - Strategy sessions to discuss the purchase, exchange, lease or sale of real property
 - Public notice of the terms and public approval of sale required



Are There Any Meetings That Must Be Closed?

- NO
- The decision to close a meeting to the public is always discretionary, not mandatory. The law does not require any meeting to be closed.

§52-4-204 Closing Meetings

- IS THERE A PROCESS TO CLOSE MEETINGS?
- YES, 52-4-204
 - A Quorum must be present.
 - Two-thirds of the body must vote to close the meeting.
 - The body must first hold a public meeting with proper notice before entering into the closed meeting.
 - The body must publicly disclose:
 - The vote by name of each member for or against entering into the closed meeting
 - The reasons for holding the closed meeting
 - Location of the closed meeting

What Is Forbidden During A Closed Meeting?

- You may not:
 - Approve any ordinance, resolution, rule, regulation, contract or appointment
 - Interview a person to fill an elected position
 - Take final action
 - Final votes must be open and on the record



§52-4-202 Notice Requirements

- ARE THERE ANY NOTICE REQUIREMENTS?
 - Must be posted as a written notice at the place where the meeting will be held
 - Must be given to at least one local general circulation newspaper or local media correspondent
 - After October, 2008, by posting notice to the “Utah Public Notice Website” 63F-1-70 (not required if you are a municipality with budget less than \$1 million)
 - At least 24 hours prior to meeting post:
 - Agenda including all action items stated with reasonable specificity
 - Date
 - Time
 - Place

UTAH OPEN & PUBLIC MEETINGS ACT

- WHAT ABOUT EMERGENCIES?
- The law allows for meetings for “emergency or urgent” matters if:
 - The best notice practicable is given
 - The minutes include a statement of the unforeseen circumstances that made the meeting necessary



UTAH OPEN & PUBLIC MEETINGS ACT

- WHAT ABOUT RECORDS OF THE MEETING? DO WE HAVE TO KEEP MINUTES?
- YES!
- 52-4-203 MINUTES OF OPEN MEETINGS, PUBLIC RECORDS AND RECORDING OF MEETINGS
- MINUTES OF BOTH OPEN AND CLOSED MEETINGS MUST BE KEPT
- A RECORDING OF AN OPEN MEETING MUST ALSO BE KEPT

Legislative Update §52-4-203

- Changed to include both written minutes and recording of open meeting as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes each meeting.

What Are The Requirements For Keeping Minutes?

- All minutes must include
 - Date/time
 - Place of meeting
 - Names of all members present or absent
- In addition minutes of open meetings must include
 - All matters proposed, discussed or decided
 - All names and substance of information from individuals giving testimony
 - Individual votes on each matter
 - Any additional information requested by a member
- Minutes of closed meetings must include
 - The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting

Legislative Update §52-4-203

- Written minutes shall be available to the public before final approval when the minutes are only awaiting formal approval.
- The minutes released prior to final approval must be identified as “unapproved”.

§52-4-203(7) Minutes and Recordings of Open Meetings

- WHEN ARE THE MINUTES OF MEETINGS PUBLIC?
 - Written minutes and recordings of open meetings are public records pursuant to 63G-2-101 et seq. (GRAMA) and shall be released within a reasonable amount of time.
 - Minutes and/or recordings of closed meetings are not public records.

WHAT HAPPENS IF SOMEONE VIOLATES OPMA?

- 52-4-305
 - “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.”
- 52-1-302
 - A court can void any action in violation of the law
 - Sometimes a violation can be “cured” by discussing an taking a public vote in a subsequent meeting
 - May have to pay court costs and attorneys fees



Common Violations Of OPMA

- Closing meetings without members of the body voting first in an open meeting to close the meeting
- Conducting a closed meeting for reasons other than those allowed by OPMA
- Taking official or final action in a closed meeting
- Failing to properly provide notice of a public meeting
- Failing to provide adequate notice of a public meeting

WHO CAN ENFORCE OPMA?

- The courts
- The Attorney General
- A County Attorney
- A private citizen who is an aggrieved party

UTAH OPEN & PUBLIC MEETINGS ACT

- HOW LONG DOES A PARTY HAVE TO PURSUE CORRECTIVE ACTION?
 - 90 Days
 - 30 Days if it involves, bonds, notes, or debt

UTAH OPEN & PUBLIC MEETINGS ACT

- QUESTIONS?